

§ 7.165

the exceptions outlined in §§ 7.150 and 7.155 is on the recipient of EPA financial assistance.

§ 7.165 Special benefits for children and the elderly.

If a recipient operating a program which serves the elderly or children in addition to persons of other ages, provides special benefits to the elderly or to children the provision of those benefits shall be presumed to be voluntary affirmative action provided that it does not have the effect of excluding otherwise eligible persons from participation in the program.

§ 7.170 Alternative funds disbursement procedures.

(a) When EPA withholds funds from a recipient under Subpart F of these regulations, the Administrator may disburse the withheld funds directly to an alternate recipient: Any public or non-profit private organization or agency, or State or political subdivision of the State.

(b) The Administrator will require any alternate recipient to demonstrate the ability to achieve the goals of the Federal statute authorizing the funds and these regulations (40 CFR Part 7).

§ 7.175 Exhaustion of administrative remedy.

(a) A complainant may file a civil action following the exhaustion of administrative remedies under the Age Discrimination Act. Administrative remedies are exhausted if:

(1) 180 days have elapsed since the complainant filed the complaint and EPA has made no finding with regard to the complaint; or

(2) EPA issues any finding in favor of the recipient.

(b) If EPA fails to make a finding within 180 days or issues a finding in favor of the recipient, EPA shall:

(1) Promptly advise the complainant of this fact; and

(2) Advise the complainant of his or her right to bring a civil action for injunctive relief; and

(3) Inform the complainant that:

(i) The complainant may bring a civil action only in a United States district court for the district in which the recipient is found or transacts business;

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(ii) A complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but that the complainant must demand these costs in the complaint;

(iii) Before commencing the action, the complainant shall give 30 days notice by registered mail to the Secretary of the Department of Health and Human Services, the Administrator, the Attorney General of the United States, and the recipient;

(iv) The notice must state: The alleged violation of the Age Discrimination Act; the relief requested; the court in which the complainant is bringing the action; and, whether or not attorney's fees are demanded in the event the complainant prevails; and

(v) The complainant may not bring an action if the same alleged violation of the Age Discrimination Act by the same recipient is the subject of a pending action in any court of the United States.

§ 7.180 Mediation of age discrimination complaints.

(a) The OCR will refer all accepted complaints alleging age discrimination to the Mediation Agency designated by the Secretary of the Department of Health and Human Services.

(b) Both the complainant and the recipient must participate in the mediation process to the extent necessary to reach an agreement or make an informed judgment that an agreement is not possible. The recipient and the complainant must meet with the mediator at least once before the OCR will accept a judgment that an agreement is not possible. The recipient and the complainant, however, need not meet with the mediator at the same time.

(c) If the complainant and the recipient reach an agreement, the mediator must prepare a written statement of the agreement and have the complainant and recipient sign it. The mediator will send a copy of the agreement to the OCR, which will take no further action on the complaint unless the complainant or the recipient fails to comply with the agreement.

(d) The mediator must protect the confidentiality of all information obtained in the course of the mediation

process. No mediator may testify in any adjudicative proceeding, produce any document, or otherwise disclose any information obtained in the course of the mediation process without prior approval of the head of the agency appointing the mediator.

(e) Mediation ends after sixty (60) days from the time EPA received the complaint or if:

(1) An agreement is reached; or
(2) The Mediator determines that an agreement cannot be reached.

(f) The mediator must return unresolved complaints to OCR to be processed in accordance with the procedure in § 7.120.

APPENDIX A TO PART 7—TYPES OF EPA ASSISTANCE AS LISTED IN THE “CATALOG OF FEDERAL DOMESTIC ASSISTANCE”

1. Assistance provided by the Office of Air, Noise and Radiation under the Clean Air Act of 1977, as amended; Pub. L. 95-95, 42 U.S.C. 7401 *et seq.* (ANR 66.001)

2. Assistance provided by the Office of Air, Noise and Radiation under the Clean Air Act of 1977, as amended; Pub. L. 95-95, 42 U.S.C. 7401 *et seq.* (ANR 66.003)

3. Assistance provided by the Office of Water under the Clean Water Act of 1977, as amended; sections 101(e), 109(b), 201-05, 207, 208(d), 210-12, 215-19, 304(d)(3), 313, 501, 502, 511 and 516(b); Pub. L. 97-117; Pub. L. 95-217; Pub. L. 96-483; 33 U.S.C. 1251 *et seq.* (OW 66.418)

4. Assistance provided by the Office of Water under the Clean Water Act of 1977, as amended; section 106; Pub. L. 95-217; 33 U.S.C. 1251 *et seq.* (OW 66.419)

5. Assistance provided by the Office of Water under the Clean Water Act of 1977, as amended; Pub. L. 95-217; 33 U.S.C. 1251 *et seq.* (OW 66.426)

6. Assistance provided by the Office of Water under the Public Health Service Act, as amended by the Safe Drinking Water Act, Pub. L. 93-523; as amended by Pub. L. 93-190; Pub. L. 96-63; and Pub. L. 93-502. (OW 66.432)

7. Assistance provided by the Office of Water under the Safe Drinking Water Act, Pub. L. 93-523, as amended by Pub. L. 96-63, Pub. L. 95-190, and Pub. L. 96-502. (OW 66.433)

8. Assistance provided by the Office of Water under the Clean Water Act of 1977, section 205(g), as amended by Pub. L. 95-217 and the Federal Water Pollution Control Act, as amended; Pub. L. 97-117; 33 U.S.C. 1251 *et seq.* (OW 66.438)

9. Assistance provided by the Office of Water under the Resource Conservation and Recovery Act of 1976; as amended by the Solid Waste Disposal Act; Pub. L. 94-580; Sec-

tion 3011, 42 U.S.C. 6931, 6947, 6948-49. (OW 66.802).

10. Assistance provided by the Office of Research and Development under the Clean Air Act of 1977, as amended; Pub. L. 95-95; 42 U.S.C. *et seq.*; Clean Water Act of 1977, as amended; Pub. L. 95-217; 33 U.S.C. 1251 *et seq.*, section 8001 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976; Pub. L. 94-580; 42 U.S.C. 6901, Public Health Service Act as amended by the Safe Drinking Water Act as amended by Pub. L. 95-190; Federal Insecticide, Fungicide and Rodenticide Act; Pub. L. 95-516; 7 U.S.C. 136 *et seq.*, as amended by Pub. L.'s 94-140 and 95-396; Toxic Substances Control Act; 15 U.S.C. 2609; Pub. L. 94-469. (ORD 66.500)

11. Assistance provided by the Office of Research and Development under the Clean Air Act of 1977, as amended; Pub. L. 95-95; 42 U.S.C. 7401 *et seq.* (ORD 66.501)

12. Assistance provided by the Office of Research and Development under the Federal Insecticide, Fungicide and Rodenticide Act, Pub. L. 95-516, 7 U.S.C. 136 *et seq.*, as amended by Pub. L.'s 94-140 and 95-396. (ORD 66.502)

13. Assistance provided by the Office of Research and Development under the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976; 42 U.S.C. 6901, Pub. L. 94-580, section 8001. (ORD 66.504)

14. Assistance provided by the Office of Research and Development under the Clean Water Act of 1977, as amended; Pub. L. 95-217; 33 U.S.C. 1251 *et seq.* (ORD 66.505)

15. Assistance provided by the Office of Research and Development under the Public Health Service Act as amended by the Safe Drinking Water Act, as amended by Pub. L. 95-190 (ORD 66.506)

16. Assistance provided by the Office of Research and Development under the Toxic Substances Control Act; Pub. L. 94-469; 15 U.S.C. 2609; section 10. (ORD 66.507)

17. Assistance provided by the Office of Administration, including but not limited to: Clean Air Act of 1977, as amended, Pub. L. 95-95; 42 U.S.C. 7401 *et seq.*, Clean Water Act of 1977, as amended; Pub. L. 95-217; 33 U.S.C. 1251 *et seq.*; Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976; 42 U.S.C. 6901; Pub. L. 94-580; Federal Insecticide, Fungicide and Rodenticide Act; Pub. L. 92-516; 7 U.S.C. 136 *et seq.* as amended by Pub. L.'s 94-140 and 95-396; Public Health Service Act, as amended by the Safe Drinking Water Act, as amended by Pub. L. 95-190. (OA 66.600)

18. Assistance provided by the Office of Administration under the Clean Water Act of 1977, as amended; Pub. L. 95-217; section 213; 33 U.S.C. 1251 *et seq.* (OA 66.603)

19. Assistance provided by the Office of Enforcement Counsel under the Federal Insecticide and Rodenticide Act, as amended; Pub.